

IN THE COURT OF APPEALS OF IOWA

No. 3-1021 / 13-0657
Filed November 20, 2013

PAUL E. VOGA and PAULA J. VOGA,
Plaintiffs-Appellants,

vs.

**CHAOUKI A. YOUNES, ARRIS M.
RICHARDSON and DONNA NORCROSS,**
Trustee of the Howard E. Richardson
Family Trust and **ALL UNKNOWN HEIRS
OF CHAOUKI A. YOUNES and OTHER
UNKNOWN CLAIMANTS and ALL
PERSONS UNKNOWN,**
Defendants-Appellees.

Appeal from the Iowa District Court for Story County, James C. Ellefson,
Judge.

Landowners seeking to quiet title appeal the district court's determination
that their neighbor established the boundary between their properties by
acquiescence. **AFFIRMED.**

Daniel Manning of Lillis, O'Malley, Olson, Manning, Pose, Templeman,
L.L.P., Des Moines, for appellants.

Robert Huffer of Huffer Law, P.L.C., Story City, for appellee.

Donna Norcross, Roland, pro se appellee.

Arris Richardson, Roland, pro se appellee.

Considered by Doyle, P.J., and Tabor and Bower, JJ.

TABOR, J.

This appeal arises out of a boundary dispute in rural Story County. Landowners Paul and Paula Voga brought an action to quiet title to a grassy lane forming the southern border between the lot they purchased from Arris Richardson and land owned by Chaouki Younes, who operates the Storybook Orchard. The district court decided Younes proved ownership of the disputed strip—running between a dilapidated fence and the survey line—under a theory of acquiescence. See Iowa Code § 650.14 (2011).

The Vogas contend Younes and the Richardsons did not mutually recognize the fence as the boundary. Because substantial evidence supports the district court's conclusion that Younes established the elements of acquiescence, we affirm its ruling.

I. Background Facts and Proceedings

Arris and her husband Howard Richardson owned land spanning both sides of where Interstate 35 now cuts through Story County. They began living on the property in 1959 and built a fence running east and west to contain the Shetland ponies that grazed in their timber before the highway was built. Although the condition of the fence deteriorated over time, the fence line remained well-defined.

In 1975, the Richardsons sold a large tract of land to Jack and Julie Roney. In 1977, the Roneys had the land surveyed by Nissen Engineering. Jack Roney worked for the engineering company and participated in that survey. Accordingly, Roney had personal knowledge the surveyed boundary extended in

an east-west direction between eighteen and sixty-one feet south of the barrier fence. Roney testified the surveyed boundary gave the Richardsons access to Royal Orchard Drive, which ended in a cul-de-sac near the southeast corner of the tract designated as Lot 11.

Also in 1977, the Roneys conveyed approximately thirteen acres to Charles and Wilma Conard, who lived in a house on that property south of Lot 11 and maintained an apple orchard. Despite participating in the land survey, Jack Roney did not recall specifically informing the Conards of the property line at the time of the sale. The Roneys and the Richardsons completed a subdivision on Lot 11 called Royal Orchard Estates in 1978.

In 1991, the Conards sold their tract of land to Younes. Before buying the real estate, Younes recalls Conard pointing to the rundown fence as the boundary separating Lot 11 from the orchard, raspberry bushes, strawberry beds, gardens, beehives, and buildings. Conard restricted the use of the lane by roping it off and posting a “no trespassing” sign. After acquiring the property, Younes maintained the land south of the fence and kept the path clear of brush. Howard Richardson maintained the land north of the fence line.

Paul and Paula Voga purchased Lot 11 in the Royal Orchard Estates from Arris Richardson and the Howard E. Richardson Family Trust in December 2010, after leasing the property for many years. About one year later the Vogas commissioned a boundary retracement survey, which depicts the southern boundary of their property as it was established in 1977. That survey is shown below.

On March 23, 2012, the Vogas filed a quiet title action, naming as defendants Younes, Arris Richardson, and trustee Donna Norcross. Younes filed an answer on April 5, 2012, urging an affirmative defense of boundary by acquiescence under section 650.14. The district court tried the dispute on January 31, 2013. On March 26, 2013, the court entered a ruling in favor of Younes, concluding he established ownership of the disputed property.¹ The Vogas filed a motion to enlarge findings on April 5, 2013. The court denied their motion on April 17, 2013. The Vogas now appeal.

II. Standard of Review

The parties both assert our review is de novo because the matter was tried in equity. We disagree. As the district court realized when writing its ruling, acquiescence cases are tried at law under chapter 650. We hear this appeal as “an action by ordinary proceedings.” Iowa Code § 650.15. Accordingly, our review is on assigned errors. *Tewes v. Pine Lane Farms, Inc.*, 522 N.W.2d 801, 804 (Iowa 1994). We engage in a limited review; the district court’s findings are the equivalent of a jury’s verdict. *Id.* If supported by substantial evidence, the court’s ruling should not be disturbed on appeal. *Id.* As an appellate court, “it is not our province to solve disputed factual questions nor pass on the credibility of witnesses.” *Concannon v. Blackman*, 6 N.W.2d 116, 118 (Iowa 1942).

III. Analysis

The Vogas believe the fence between their lot and Younes’s land is nothing more than a barrier, erected decades ago to corral ponies, and was

¹ Finding boundary by acquiescence, the district court found “no purpose in considering adverse possession.”

never treated by the Richardsons as the true boundary dividing the real estate. Younes argued and the district court decided the neighboring landowners recognized and acquiesced in the fence as the boundary since Younes purchased the southern lot in 1991.

Their dispute is governed by Iowa Code section 650.14, which states “If it is found that the boundaries and corners alleged to have been recognized and acquiesced in for ten years have been so recognized and acquiesced in, such recognized boundaries and corners shall be permanently established.”

The term “acquiescence” is defined as

the mutual recognition by two adjoining landowners for ten years or more that a line, definitely marked by fence or in some manner, is the dividing line between them. Acquiescence exists when both parties acknowledge and treat the line as the boundary. When the acquiescence persists for ten years the line becomes the true boundary even though a survey may show otherwise and even though neither party intended to claim more than called for by his deed.

Egli v. Troy, 602 N.W.2d 329, 332 (Iowa 1999).

A claim of boundary by acquiescence may be raised as an affirmative defense in an action to quiet title. *Ivener v. Cowan*, 175 N.W.2d 121, 122 (Iowa 1970). The burden is upon the party claiming a boundary line different from that disclosed by a survey to establish acquiescence by clear proof. *Brown v. McDaniel*, 156 N.W.2d 349, 351 (Iowa 1968). Acquiescence may be inferred by the silence or inaction of one party who knows of the boundary line claimed by the other and fails to dispute it for a ten-year period. *Tewes*, 522 N.W.2d at 806. The original intent in erecting the fence is not important; the only question is whether the two adjoining landowners, for ten years or more, mutually

acquiesced in that fence as a boundary line notwithstanding the purpose of its erection. *Sorenson v. Knott*, 320 N.W.2d 645, 647 (Iowa Ct. App. 1982).

On appeal, the Vogas argue Younes did not prove the Richardsons knew he was “asserting the old dilapidated fence as the property line” until October 2012. They argue the ten-year period required for acquiescence “never commenced.”

The district court determined that “[w]hen Younes arrived on the scene in 1991, the physical indicators supported Mr. Conard’s statement that the fence was the boundary.” A grassy lane was visible; Conard tended gardens and beehives north of the survey line. Conard stretched a rope across the path at its east end which he adorned with a “no trespassing” sign. The court also found the Richardsons and the Vogas “had to be aware that there were no physical markings along the surveyed boundary.”

Proof of acquiescence turned largely on the uncontroverted testimony of Chaouki Younes. Younes testified that since purchasing the real estate in 1991 he and his children maintained the area south of the fence—mowing, spraying for poison ivy and other weeds, and using a chain saw to remove fallen trees and to cut down volunteer trees in the lane. “So there was a lot of things to do in there [to keep the driveway clear] and I’ve done this for the last 20 some years.” Younes also testified to gardening and keeping beehives north of the driveway. Younes also piled limbs pruned from the apple trees on the north side of driveway, and used the same pit as the Conards to burn the brush.

Younes denied the Richardsons, or the Vogas as their tenants, ever cut trees or burned brush in the disputed strip. Younes recalled meeting Howard Richardson and his son Brian at the fence line a couple of years after he bought the farm. The Richardsons came with a truck and “wanted to go on my fence line and clean up all the mess Mr. Conard left behind.” Younes remembered discarded barbed wire and old appliances north of the fence. Based on Younes’s testimony, the district court found the Richardsons “did not take any initiative to clean the area south of the fence, although they removed two items from the south side, a snow scoop and a tiller, that Mr. Younes suggested they might take.”

Younes had more interactions with Arris Richardson, whose husband Howard died in the late 1990s. Younes invited her annually to his orchard to get apples and other produce. During those visits, she could see Younes conducted his farming operation up to the fence line, but never said his use was subject to her permission. Likewise, the record contains no evidence the Richardsons ever told Younes the fence was not the true boundary.

The persistent inaction by the Richardsons—when faced with Younes’s treatment of the fence as the boundary line—was sufficient to meet the consent element of acquiescence. See *Ollinger v. Bennett*, 562 N.W.2d 167, 171 (Iowa 1997) (reiterating that an overt act is not required to establish acquiescence). Contrary to the Vogas’ claim on appeal, Younes was not required to announce to the Richardsons that he believed the fence to be the true boundary. See *Brown v. Bergman*, 216 N.W. 731, 732 (Iowa 1927) (refuting plaintiff’s argument that

defendant never made any claim to either him or his tenant that the fence was the true boundary line, the court stated in part that “[the fence’s] very existence, defendant’s occupation and use of the land up to the fence, and his maintenance of the fence were open and obvious information of his possession and of his claim of ownership”). The Richardsons could see from Younes’s efforts to maintain and utilize the area south of the fence that he claimed ownership of the now-disputed swath of land. When they did nothing to dispel his belief for more than a decade, he could establish his theory of acquiescence. Substantial evidence supports the district court’s findings.

AFFIRMED.